

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7655

Petition of Apple Island Resort vs. Vermont Electric)
Cooperative, Inc., and petitions of James Poitras and)
William C. Fredette vs. Apple Island Resort, in re:)
disputes concerning charges for use of electricity at)
the Apple Island Resort, located in South Hero,)
Vermont)

Order entered: 9/10/2010

PREHEARING CONFERENCE MEMORANDUM AND ORDER

This docket was opened for purposes of consolidating and hearing three related petitions. The first petition involves a complaint by Apple Island Resort ("AIR") concerning the charges for electric power supplied to it by Vermont Electric Cooperative, Inc. ("VEC"). AIR seeks relief from the application of a rate design provision in VEC's tariff for large general service customers, which AIR contends is unfairly applied to AIR and results in exorbitant demand charges. The other two petitions involve complaints and requests for relief from owners of campground sites at the resort ("AIR Customers") against AIR related to electric charges billed to them by AIR.

AIR, which operates a seasonal campground business in South Hero, Vermont, is a large seasonal user of electricity from May to October, with its demand typically peaking in July or August. AIR is subject to significant monthly demand charges throughout the year, based on its peak summer demand, under VEC's existing tariff for large general service customers.¹ AIR, which provides submetered electric service to seasonal campground users pursuant to 30 V.S.A. 249a, has sought to recoup a portion of these demand charges from submetered campground

1. This tariff was approved by the Board in November of 2007, and the applicable rate design provision became effective, after a Board-approved postponement, on November 1, 2008.

electric customers, including the AIR Customers, through a flat monthly charge added to their electric bills.

On August 31, 2010, I convened a prehearing conference in this docket. The following persons attended the prehearing conference: Hal Rainney, property manager of AIR, for AIR; James Poitras, pro se, a campsite owner and submetered AIR electric customer; William C. Fredette, pro se, a campsite owner and submetered AIR electric customer; William Dods, consumer affairs specialist, for the Vermont Department of Public Service ("Department"); and Victoria J. Brown, Esq., of Primmer Piper Eggleston & Cramer, PC, and David Lahar, a manager of VEC, for VEC.

In addition to Mr. Poitras and Mr. Fredette, other submetered electric customers of AIR also attended the prehearing conference. At the prehearing conference, I set a deadline for any motions to intervene of September 15, 2010. Accordingly, any person who wishes to join in the petitions of Mr. Poitras and Mr. Fredette, or otherwise become a party in this proceeding, must file a motion to intervene with the Board by September 15. The deadline for any objections to any such motions to intervene was set as September 30, 2010.²

From the filings of the parties and discussions at the prehearing conference, it appears that neither the AIR Customers nor any representative of AIR will be available to attend any proceedings in this docket much beyond the second week in October. Given the apparent absence of significant disputes concerning the relevant facts and the desire to avoid postponing resolution of this matter until next May, the parties at the prehearing conference were amenable to resolving this matter based on their filings without a technical hearing.

None of the parties expressed any significant interest in conducting discovery as part of this proceeding. To preserve the parties' opportunity to conduct discovery should they wish to do so, I set a deadline in this Order that any requests by a party to any of the other parties seeking answers to questions or requesting the production of additional documents be made in writing by

2. At the prehearing conference, Mr. Rainney indicated that it was unlikely that AIR would object to any AIR customers who seek to join in the petitions of the AIR Customers.

September 15, 2010.³ Responses to any such discovery requests will be due by September 24, 2010.

In order to determine whether this proceeding can be resolved on the basis of the filings of the parties without a technical hearing, the parties must advise the Board as to the existence of any genuine issue of material fact. To the extent that any of the parties dispute any of the relevant facts set forth in any filings made by another party as of August 31, 2010, such disputing party shall file a statement with the Board by September 15, 2010, specifically setting forth such disputed facts. In addition, any additional factual information any of the parties wish to provide to the Board must be filed with the Board by September 15.⁴

If any of the parties wish to make any final arguments prior to the issuance of a proposal for decision by the Hearing Officer, such party shall make a written filing of such final arguments (which the Board refers to as briefs) by October 15, 2010.⁵ As discussed at the prehearing conference, these briefs should be based on the undisputed facts contained in the filings made by the parties as of September 30, 2010, and should not contain any new facts. In the brief, a party should present arguments for why the relevant issues in this proceeding should be resolved in its favor based on existing law, including applicable statutes, Board rules and orders, as well as on policy considerations and general principles of fairness and equity. If any party elects to file a brief, the other concerned parties shall have until October 29, 2010, to file a response to such brief.

In view of the abbreviated schedule and the fact that most of the parties are not represented by legal counsel, it seems particularly appropriate to set forth a preliminary assessment of the issues to be resolved in each of the two disputes. My intention is to help the parties in framing and addressing relevant issues if they choose to file briefs in this proceeding.

3. If any person who seeks to become an additional party to this proceeding wishes to conduct discovery, such person shall so indicate in the motion to intervene. Appropriate adjustments to the discovery schedule and the overall schedule to this proceeding will be made upon any grant of such a motion to intervene.

4. To the extent any of the parties (i) obtain additional information in discovery that a party believes is relevant to the Board's decisions in this proceeding, or (ii) dispute any material facts set forth in any filing a party makes subsequent to August 31, 2010, such party shall have until September 30, 2010, to make the appropriate filing with the Board.

5. At the prehearing conference, a September 30 date for the filing of briefs was contemplated. Upon further reflection, this Order extends the date for the filing of briefs to October 15.

However, this recitation of issues is not intended to limit any party's ability to raise additional issues that such party believes is relevant to the Board's decision in this docket.

With respect to AIR's complaint against VEC, the relevant issues would appear to include the following:

1. In its filings with the Board, has AIR established a basis for the Board to conclude that VEC has violated any tariff, statute, rule or order of the Board?
2. Is there any other basis in law for the Board to grant the relief requested by AIR in this proceeding?
3. Do the filings of the parties in this docket provide a sufficient basis to support a recommendation to the Board to open a separate rate investigation under 30 V.S.A. § 218 with respect to VEC's tariff for large general service customers?⁶

With respect to the complaints of the AIR customers against AIR, the relevant issues seem to relate mostly to the application of 30 V.S.A. § 249a (Campground Submetering),⁷ Board Rule 4.800 (the Board rule related to campground submetering), policy considerations, and general principles of fairness and equity. The relevant issues would appear to include the following:

1. Does AIR have a right to include in the electric charges to its submetered electric customers a portion of the monthly demand charges billed to AIR by VEC under VEC's tariff for large general services customers?

6. Section 218(a) provides:

When, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter, the board may order and substitute therefor such rates, tolls, charges, or schedules, and make such changes in any regulations, measurements, practices, or acts of such company relating to its service, and may make such order as will compel the furnishing of such adequate service as shall at such hearing be found by it to be just and reasonable.

7. Section 249a provides:

Notwithstanding the provisions of section 249 of this title or any other provision of this title, a person operating a recreational campground may provide submetered electric service to campground users on a nonprofit basis, if such service is provided in accordance with rules adopted by the board, including rules relating to notice of rates and charges, accuracy of electrical submeters, and reasonable billing and complaint procedures.

2. Assuming AIR does have the right to recoup a portion of the demand charges from AIR's submetered electric customers, can AIR include in its electric charges to such customers a portion of the monthly demand charges it incurs during off-season months, or is its recovery of such demand charges limited under Board Rule 4.800, or otherwise, solely to demand charges billed monthly to AIR by VEC during AIR's May to October season?

3. Assuming AIR does have the right to recoup a portion of the demand charges from AIR's submetered electric customers, does AIR have the right to recoup a portion of the demand charges from its submetered electric customers in the form of flat monthly charges that are not directly related to kWh usage of electricity by such customers?

4. Assuming AIR does have the right to recoup a portion of the demand charges from AIR's submetered electric customers, how should the amount of such charges to be recovered from any submetered electric customer be determined? Would it be appropriate to determine the average annual cost per kWh of AIR based on the total annual dollar amount of its electric bills (under the relevant account) and to apply that average cost per kWh to the monthly kWh usage of its submetered electric customers?

The parties provided additional clarifying information about themselves and their petitions both on their own initiative and in response to questions at the prehearing conference. I asked Mr. Rainney whether AIR would be willing to forego the flat rate billing of demand charges to its customers during the pendency of this proceeding. Mr. Rainney responded that AIR is still evaluating the complaints of the AIR Customers, and that he was not in a position to agree to this proposal at that time.

At the prehearing conference, I also encouraged AIR and the AIR Customers to work together to achieve a compromise reflecting an appropriate per kwh charge for electricity usage by campground customers. Mr. Rainney and the AIR Customers indicated that they would work together over the next several weeks to seek to achieve a resolution to their dispute that would preclude the need for Board adjudication. In addition to the other considerations mentioned at the prehearing conference as to why this may be in the mutual interest of the parties, I also note that any Board order in this proceeding will either grant or deny the claims for relief of the AIR

Customers, but it will not necessarily prescribe the appropriate rates for submetered AIR electric customers or even the specific method to be used in determining the appropriate rates.

In summary, the schedule for this proceeding, subject to possible modification as discussed above, shall be as follows:

September 15, 2010 – Deadline for:

Motions to intervene;

Statements of disputed facts based on filings as of
8/31/10;

Additional relevant information pre-discovery, if any;

Requests for discovery, if any.

September 24, 2010 – Responses to any discovery requests due.

September 30, 2010 – Deadline for:

Any objections to motions to intervene;

Additional relevant information based on discovery;

Statements of disputed facts re any filing since 8/31/10.

October 15, 2010 – Deadline for briefs, if any.

October 29, 2010 – Deadline for responses to briefs, if any.

This above abbreviated schedule, which foregoes a technical hearing, is based on my understanding of the desires of the parties to streamline and shorten the process to the extent possible. If any party, or any person who seeks to intervene in this proceeding, objects to the above schedule, requests a technical hearing, or wishes to postpone any deadline, such party or person shall make a filing to that effect, with supporting reasons, by September 15, 2010.

Please note that an original and two copies of all filings made by the parties must be received at the Board by the applicable deadline. Also, parties and potential intervenors must

provide a copy of each filing they make with the Board to each party on the service list at the same time the filing is submitted to the Board.

SO ORDERED.

Dated at Montpelier, Vermont, this 10th day of September, 2010.

s/ Lars Bang-Jensen

Lars Bang-Jensen
Hearing Officer

OFFICE OF THE CLERK

FILED: September 10, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)